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9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**
12 **PHOENIX DIVISION**

13 **Dong Van Nguyen,**

Case No.

14 *Petitioner,*

15 v.

**PETITION FOR A WRIT OF HABEAS
CORPUS AND INJUNCTIVE RELIEF**

16 **Gregory J. Archambeault, in his official**
17 *capacity as Field Office Director, San Diego*
18 *Field Office, U.S. Immigration and Customs*
19 *Enforcement,*

20 **David R. Rivas, in his official capacity as**
21 *Warden, San Luis Regional Detention Center,*

22 **United States Department of Homeland**
23 **Security,**

24 **United States Immigration and Customs**
25 **Enforcement,**

26 *Respondents.*

27 **INTRODUCTION**

28 1. This case challenges the unlawful re-detention of Dong Van Nguyen (“Petitioner”
or “Mr. Nguyen”), who is currently in the custody of United States Immigration and Customs
Enforcement (“ICE”), at the San Luis Regional Detention Center, Arizona.

1 11. Respondent, David R. Rivas, is sued in his official capacity as Warden of the San
2 Luis Regional Detention Center in Arizona, where Mr. Nguyen is currently detained.

3 12. Respondent, United States Department of Homeland Security (“DHS”), is a
4 federal agency headquartered in Washington, D.C. and the parent agency of United States
5 Immigration and Customs Enforcement.
6

7 13. Respondent, United States Immigration and Customs Enforcement (“ICE”) is a
8 component agency of DHS.

9 **JURISDICTION AND VENUE**

10 14. This Court has subject matter jurisdiction under 28 U.S.C. § 2241, the Suspension
11 Clause of the Constitution, and 28 U.S.C. § 1331 because this action arises under federal law,
12 including the Immigration and Nationality Act, 8 U.S.C. § 1101, *et seq.*, and Administrative
13 Procedure Act, 5 U.S.C. § 551, *et seq.*
14

15 15. Venue is proper in this district because Respondents have detained Mr. Nguyen
16 within this District.
17

18 **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

19 **A. Petitioner: Dong Van Nguyen**

20 16. In 1977, Mr. Nguyen was born in Vietnam.

21 17. On February 25, 1992, Mr. Nguyen entered the United States as a refugee.

22 18. Mr. Nguyen’s father is a United States citizen as are his four children.

23 19. On July 27, 1999, an immigration judge ordered Mr. Nguyen removed from the
24 United States.
25

26 20. In 2000, ICE released Mr. Nguyen on an OSUP because Vietnam’s policy was not
27 to accept the repatriation of Vietnamese nationals from the United States.
28

1 21. Between 2000 and 2023, Mr. Nguyen spent time in criminal detention and
2 immigration detention.

3 22. ICE most recently released Mr. Nguyen on an OSUP in 2023, because his removal
4 to Vietnam was not foreseeable.

5 23. Mr. Nguyen has complied with all conditions of his release and supervision.

6 24. On June 24, 2025, ICE detained Mr. Nguyen without prior notice and without
7 revoking his OSUP.

8 25. ICE previously provided Mr. Nguyen with notice that the agency would offer him
9 with an opportunity to prepare for an orderly departure from the United States if Vietnam agreed
10 to his return.

11 26. There are no circumstances indicating that Mr. Nguyen now poses a flight risk or
12 danger to the community.

13 27. Following his unannounced arrest, ICE transferred Mr. Nguyen from Chula Vista,
14 California, to the Otay Mesa Detention Center in Jamul, California, where he spent seven weeks.

15 28. ICE then transferred Mr. Nguyen to the San Luis Regional Detention Center in
16 Arizona.

17 29. ICE never revoked his OSUP or obtained travel documents allowing for his return
18 to Vietnam.

19 **B. Repatriation To Vietnam**

20 30. Before a Vietnamese immigrant without a passport or other travel document can
21 be repatriated, Vietnam must issue a passport or other travel document in response to a request
22 from ICE. *See Trinh v. Homan*, 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020).

23 31. Between the end of the Vietnam War and 2008, Vietnam refused to repatriate any
24 Vietnamese immigrant who had been ordered removed from the U.S. *See id.*

1 32. In 2008, Vietnam agreed to consider repatriation requests for Vietnamese
2 immigrants who had arrived in the U.S. after July 12, 1995, but not those who arrived before July
3 12, 1995. *See id.*

4 33. Between 2017 and 2019, ICE requested travel documents for pre-1995 Vietnamese
5 immigrants 251 times; Vietnam granted those requests only 18 times. *Id.* at 1087-88.

6 34. In November 2020, the U.S. and Vietnam signed a Memorandum of
7 Understanding (“MOU”) that created a process for deporting pre-1995 immigrants.

8 35. Section 4 of the MOU obliges the U.S. and Vietnam to consider specific factors
9 prior to deciding to remove a Vietnamese citizen, and prior to deciding to accept for repatriation
10 a Vietnamese citizen.

11 36. These factors are not publicly known, because the U.S. government redacted them
12 in Freedom of Information Act (“FOIA”) disclosures of the MOU; yet, they appear to dictate
13 which categories of people may be deported to Vietnam.

14 37. Under Section 8 of the MOU, if a person meets the designated criteria, ICE is
15 expected to put together a documentation package for Vietnam to include, inter alia, a self-
16 declaration form from the individual to be removed (using a form attached to the MOU), copies
17 of identity and citizenship documents, and copies of the final order of removal and any criminal
18 records.

19 38. Between September 2021 to September 2023, Vietnam issued travel documents to
20 only four pre-1995 Vietnamese immigrants whom ICE sought to deport.

21 39. The process to secure a travel document for a pre-1995 immigrant is multilayered
22 and lengthy, requiring interviews and verification by authorities in Vietnam. The only known
23 change has been ICE’s policy and practice of deporting individuals to third countries.

24 40. On June 23 and July 3, 2025, the Supreme Court issued a stay of a national class-
25 wide preliminary injunction issued in *D.V.D. v. U.S. Department of Homeland Security*, No. CV
26 25-10676-BEM, 2025 WL 1142968, at *1, 3 (D. Mass. Apr. 18, 2025), pending appeal, which
27

1 requires ICE to follow the statutory and constitutional requirements before removing an
2 individual to a third country. *U.S. Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025)
3 (mem.); *id.*, No. 24A1153, 2025 WL 1832186 (U.S. July 3, 2025).

4 41. On July 9, 2025, ICE issued a new memo to staff, instructing that ICE may deport
5 a person to a third country not designated on the removal order, without any procedures for notice
6 or an opportunity to be heard, if the State Department confirms that it has received diplomatic
7 assurances that individuals will not be persecuted or tortured.

8 42. If no diplomatic assurances are received, the memo instructs officers to serve on
9 the individual a Notice of Removal that includes the intended country of removal.

10 43. It tells officers not to ask whether the individual is afraid of removal to that country,
11 and states that officers should “generally wait at least 24 hours following service of the Notice of
12 Removal before effectuating removal.”

13 44. But states that “[i]n exigent circumstances, [ICE] may execute a removal order six
14 (6) or more hours after service of the Notice of Removal as long as the [noncitizen] is provided
15 reasonable means and opportunity to speak with an attorney prior to removal.”

16 45. The memo further instructs that if the noncitizen “does not affirmatively state a
17 fear of persecution or torture if removed to the country of removal listed on the Notice of Removal
18 within 24 hours, [ICE] may proceed with removal to the country identified on the notice.” If the
19 noncitizen “does affirmatively state a fear if removed to the country of removal,” then ICE will
20 refer the case to U.S. Citizenship and Immigration Services (“USCIS”) for a screening for
21 eligibility for withholding of removal and protection under the Convention Against Torture.
22

23 46. “USCIS will generally screen within 24 hours.” *Id.*

24 47. If USCIS determines that the [noncitizen] does not meet the standard, the
25 individual will be removed. *Id.* If USCIS determines that they have met the standard, then the
26 policy directs ICE to either move to reopen removal proceedings “for the sole purpose of
27

1 determining eligibility for [withholding of removal protection] and [Convention Against Torture
2 ('CAT')] or designate another country for removal.” *Id.*

3 **LEGAL BACKGROUND**

4 **A. Due Process Governs Decisions to Revoke an Order of Supervision**

5
6 48. “The Due Process Clause applies to all persons within the United States, including
7 aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v.*
8 *Davis*, 533 U.S. 678, 693 (2001) (citation modified). “Freedom from imprisonment—from
9 government custody, detention, or other forms of physical restraint—lies at the heart of the liberty
10 that Clause protects.” *Id.* at 690 (2001).

11
12 49. Under substantive due process doctrine, revocation of a noncitizen’s order of
13 supervision is a restraint on liberty that is permissible only permissible if it serves a “legitimate
14 nonpunitive objective.” *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has
15 only recognized two legitimate objectives of immigration detention; preventing danger to the
16 community or preventing flight prior to removal. *See Zadvydas*, 533 U.S. at 690-92 (discussing
17 constitutional limitations on civil detention).

18
19 50. “Procedural due process imposes constraints on governmental decisions which
20 deprive individuals of liberty,” like the decision to revoke a non-citizen’s order of supervision.
21 *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). “The fundamental
22 requirement of [procedural] due process is the opportunity to be heard at a meaningful time and
23 in a meaningful manner.” *Id.* at 333 (citation modified).

1 **B. Procedure for Revoking an Order of Supervision And Removal To Third**
2 **Countries Without Due Process**

3 51. A noncitizen with a final order of removal “who is not removed within the [90-
4 day] removal period . . . shall be subject to [an order of] supervision under regulations prescribed
5 by the Attorney General.” 8 U.S.C. § 1231(a)(3) (titled “Supervision after 90-day period”).

6 52. A noncitizen may only be detained past the 90-day removal period following a
7 removal order if found to be “a risk to the community or unlikely to comply with the order of
8 removal” or if the order of removal was on specified grounds. *Id.* § 1231(a)(6).

9 53. But even where initial detention past the 90-day removal period is authorized, if
10 “removal is not reasonably foreseeable, the court should hold continued detention unreasonable
11 and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the alien’s release may and
12 should be conditioned on any of the various forms of supervised release that are appropriate in
13 the circumstances” *Zadvydas*, 533 U.S. at 699-700.

14 54. Regulations provide the following additional circumstances, beyond those listed
15 at § 1231(a)(6), that allow for the revocation of an order of supervision and re-detention of a non:
16 “(1) the purposes of release have been served; (2) the alien violates any condition of release; (3)
17 it is appropriate to enforce a removal order . . . ; or (4) the conduct of the alien, or any other
18 circumstance, indicates that release would no longer be appropriate.” 8 C.F.R. § 241.4(l)(2); *see*
19 *also id.* § 241.13(i) (permitting revocation of an order of supervision only if a non-citizen
20 “violates any of the conditions of release”).

21 55. Because “[r]egulations cannot circumvent the plain text of the statute[,]” these
22 regulations are *ultra vires* of statutory authority. *See, e.g., You v. Nielsen*, 321 F. Supp. 3d. 451,
23 463 (S.D.N.Y. 2018) (comparing regulations to 8 U.S.C. § 1231(a)(6), which authorizes detention
24

1 past the removal period only if person is a risk to the community, unlikely to comply with the
2 order of removal, or was ordered removed on specified grounds).

3 56. The governing regulations permit only certain officials to revoke an order of
4 supervision: the ICE Executive Associate Director, a field office director, or an official “delegated
5 the function or authority . . . for a particular geographic district, region, or area.” *Ceesay v.*
6 *Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025) (citing 8 C.F.R. §§ 1.2, 241.4(l)(2) and
7 explaining that the Homeland Security Act of 2002 renamed the position titles listed in § 241.4).
8 If the field office director or a delegated official intends to revoke an order of supervision, they
9 must first make findings that “revocation is in the public interest and circumstances do not
10 reasonably permit referral of the case to the Executive Associate [Director].” 8 C.F.R. §
11 241.4(l)(2). For a delegated official to have authority to revoke an order of supervision, the
12 delegation order must explicitly say so. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161
13 (finding a delegation order that “refers only to a limited set of powers under part 241 that do not
14 include the power to revoke release” insufficient to grant authority to revoke an order of
15 supervision).
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19 57. Upon revocation of an order of supervision, ICE must give a noncitizen notice of
20 the reasons for revocation and a prompt interview to respond. 8 C.F.R. § 241.4(l)(1).
21

22 **C. Removal To Third Countries Without Due Process**

23 58. To remove a foreign national to a third country, the INA requires that the Attorney
24 General—by an through a delegate, such as an immigration judge—first determine that it is
25 “impracticable, inadvisable, or impossible” to remove Petitioner to Vietnam and that the
26 designated third country “will accept [Petitioner] into that country.” 8 U.S.C. §
27 1231(b)(2)(E)(vii); *see Himri v. Ashcroft*, 378 F.3d 932, 939 n. 4 (9th Cir. 2004) (8 U.S.C. §
28

1 1231(b)(E)(vii) “indisputably requires the Attorney General to prove that the proposed country
2 of removal is willing to accept the alien”); *see also Jama v. Immigr. & Customs Enf’t*, 543 U.S.
3 335, 344 (2005).

4 59. The statute delegates the authority to the Attorney General, not DHS. 8 U.S.C. §
5 1231(b)(2)(E)(vii) (“the Attorney General shall remove the alien to. . .”); *see also* 8 C.F.R. §
6 1240.10(f) (in removal proceedings the immigration judge “shall. . . identify for the record a
7 country, or countries in the alternative, to which the alien’s removal may be made”).
8

9 60. To remove a foreign national to a third country, the Attorney General would need
10 to move to reopen removal proceedings to designate a third country for removal under the
11 statutory process. *See, e.g., Sadychov v. Holder*, 565 F. App’x 648, 651 (9th Cir. 2014)
12 (unpublished) (holding that should a new country of removal be designated, “the agency must
13 provide [the noncitizen] with notice and an opportunity to reopen his case for full adjudication of
14 his claim of withholding of removal from” the third country); *Aden v. Nielsen*, 409 F. Supp. 3d
15 998, 1009, 1011 (W.D. Wash. 2019) (finding that removal proceedings “shall be reopened and a
16 hearing shall be held before the immigration judge so that petitioner may apply for relief from
17 removal” as to a country not designated in prior proceedings).
18

19 61. Adherence to that process is necessary to ensure the foreign national has a statutory
20 right to claim protection in immigration court against removal to a third country where he may
21 be persecuted or tortured, a form of protection known as withholding of removal, 8 U.S.C.
22 § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16, as well as his right to claim deferral of
23 removal under CAT. *See* 28 C.F.R. § 200.1 (“A removal order. . . shall not be executed in
24 circumstances that would violate [the CAT]”); 8 C.F.R. §§ 208.17-18, 1208.17-1208.18.
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1 62. At a minimum, Due Process guarantees the noncitizen meaningful notice of the
2 third country designated for removal and an opportunity to respond. *See D.V.D.*, 145 S. Ct. at
3 2163 (Sotomayor, J., dissenting) (“[t]he Fifth Amendment unambiguously guarantees that right”
4 to notice of a third country removal so that a noncitizen “learn[s] about it in time to seek an
5 immigration judge’s review”). Notice cannot be “last minute” because that would deprive an
6 individual of a meaningful opportunity to apply for fear-based protection from removal.
7 *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

9 63. Individuals must have time to prepare and present relevant arguments and
10 evidence, and to seek reopening of their removal case. “[W]ritten notice of the country being
11 designated” is required and “the statutory basis for the designation, i.e., the applicable subsection
12 of § 1231(b)(2)” must be specified. *Aden*, 409 F. Supp. 3d at 1019; *see also D.V.D. v. U.S. Dep’t*
13 *of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025)
14 (“All removals to third countries, i.e., removal to a country other than the country or countries
15 designated during immigration proceedings as the country of removal on the non-citizen’s order
16 of removal, must be preceded by written notice to both the non-citizen and the non-citizen’s
17 counsel in a language the non-citizen can understand.” (internal citation omitted)); *Andriasian*,
18 180 F.3d at 1041 (due process requires notice to the noncitizen of the right to apply for asylum
19 and withholding to the country where they will be removed).

22 64. Due process also demands that the government “ask the noncitizen whether he or
23 she fears persecution or harm upon removal to the designated country and memorialize in writing
24 the noncitizen’s response. This requirement ensures DHS will obtain the necessary information
25 from the noncitizen to comply with § 1231(b)(3) and avoids [a dispute about what the officer and
26 noncitizen said].” *Aden*, 409 F. Supp. 3d at 1019.

1 65. Any unannounced attempt at a third country removal would violate these statutory
2 and constitutional procedural protections.

3 66. According to ICE's memo issued July 9th, individuals can be removed to third
4 countries "without the need for further procedures," so long as "the [U.S.] has received diplomatic
5 assurances."
6

7 67. The policy instructs officers to violate their statutory and constitutional obligations
8 to noncitizens.

9 68. The same is true of the minimal procedures ICE offers when no diplomatic
10 assurances are present that a noncitizen will not be tortured upon arrival in a third country.
11

12 69. The policy provides no meaningful notice (6-24 hours), instructs officers *not* to
13 ask about fear, and provides no actual opportunity for noncitizens to seek counsel and prepare a
14 fear-based claim (6-24 hours), let alone reopen removal proceedings.

15 70. In sum, the policy directs ICE officers to violate the rights of noncitizens whom
16 they seek to subject to the third country removal program.
17

18 71. Several courts have recently granted individual TROs against removal to third
19 countries under similar circumstances. *See generally J.R. v. Bostock*, 25-cv-01161-JNW, 2025
20 WL 1810210 (W.D. Wash. Jun. 30, 2025) (immediately enjoining removal to "Cuba, Libya, or
21 any third country in the world absent prior approval from this Court"); *Phan*, 2025 WL 1993735,
22 at *7 (enjoining Respondents from "re-detaining or removing Petitioner to a third country without
23 notice and an opportunity to be heard"); *Hoac*, 2025 WL 1993771, at *7 (same); *Vaskanyan v.*
24 *Janecka*, 25-cv-01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. Jun. 25, 2025); *Ortega v. Kaiser*,
25 25-cv-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025).
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1 **D. The APA Sets Minimum Standards for Final Agency Action**

2 72. The Administrative Procedure Act authorizes judicial review of final agency
3 action. 5 U.S.C. § 704.

4 73. Final agency actions are those (1) that “mark the consummation of the agency’s
5 decision making process[,]” and (2) “by which rights or obligations have been determined, or
6 from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation
7 modified).

8 74. ICE’s decision to re-detain Mr. Nguyen’s OSUP without written notice is a final
9 agency action subject to this Court’s review.

10 75. Here, Mr. Nguyen’s re-detention marked the consummation of ICE’s decision
11 making process regarding Mr. Nguyen’s custody.

12 76. Mr. Nguyen’s re-detention was an action by which rights or obligations have been
13 determined or from which legal consequences flowed, as ICE detained Mr. Nguyen in violation
14 of his rights under the Constitution, statute, and regulations.

15 **E. Agencies Must Follow Lawful Rules And Policy**

16 77. Under the *Accardi* doctrine, a foundational principle of administrative law,
17 agencies must follow their own procedures, rules, and instructions. See *United States ex rel.*
18 *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where
19 the Board of Immigration Appeals failed to follow procedures governing deportation
20 proceedings); see also *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals
21 are affected, it is incumbent upon agencies to follow their own procedures . . . even where the
22 internal procedures are possibly more rigorous than otherwise would be required.”).

1 78. *Accardi* is not “limited to rules attaining the status of formal regulations.” *Montilla*
2 v. *INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of
3 unpublished rules and instructions to agency officials. See *Morton v. Ruiz*, 415 U.S. 235
4 (affirming reversal of agency denial of public assistance made in violation of internal agency
5 manual); *U.S. v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) (under *Accardi*, reversing decision to
6 admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).
7

8 79. Where a release notification issued alongside an order of supervision instructs that
9 a noncitizen with a final order of removal will be given an opportunity to prepare for an “orderly
10 departure,” ICE’s failure to follow that instruction is an *Accardi* violation. See *Ceesay*, 781 F.
11 Supp. 3d at 169; *Ragbir v. Sessions*, 2018 WL 623557 (S.D.N.Y. Jan. 29, 2018), *vacated and*
12 *remanded on other grounds sub nom. Ragbir v. Barr*, 2019 WL 6826008 (2d Cir. July 30, 2019);
13 *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017) (ordering release of petitioners to give an
14 opportunity to prepare for orderly departure).
15

16 **CLAIMS FOR RELIEF**

17 **Count One**

18 **Violation of the Fifth Amendment of the U.S. Constitution**
19 **Substantive Due Process**

20 80. Petitioner realleges all paragraphs above as if fully set forth here.

21 81. The Due Process Clause of the Fifth Amendment protects against punitive
22 detention and similar restrictions on a person’s liberty.

23 82. ICE found that Mr. Nguyen was neither a danger to the community nor a flight
24 risk when ICE released him on an OSUP in 2023.

25 83. Mr. Nguyen complied with all terms and conditions of his OSUP.

26 84. No change in circumstances warranted Mr. Nguyen’s re-detention on June 24,
27 2025.

1 85. Mr. Nguyen's arrest and re-detention, therefore, did not bear a reasonable
2 relationship to the two recognized purposes of immigration detention: preventing danger to the
3 community, or flight prior to removal.

4
5 86. Because Respondents had no legitimate, non-punitive objective in revoking Mr.
6 Nguyen's order of supervision, his re-detention violates substantive due process under the Fifth
7 Amendment of the U.S. Constitution.

8
9 **Count Two**
10 **Violation of the Fifth Amendment of the U.S. Constitution**
11 **Procedural Due Process**

12 87. Petitioner realleges all paragraphs above as if fully set forth here.

13 88. The Supreme Court's decision in *Mathews*, 424 U.S. at 333, instructs courts to
14 balance three factors to determine whether procedural due process is satisfied: (1) the private
15 interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used,
16 and the probable value, if any, of additional procedural safeguards; and (3) the government's
17 interest, including fiscal and administrative burdens that additional or substitute procedural
18 requirements entail.

19 89. All three factors demonstrate Respondents have violated Mr. Nguyen's rights to
20 due process.

21 90. The first factor, the private interest at issue, favors Mr. Nguyen. "Freedom from
22 imprisonment—from government custody, detention, or other forms of physical restraint—lies at
23 the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects."
24 *Zadvydas*, 533 U.S. at 690.

25
26 91. The second factor, the risk of erroneous deprivation of liberty and the probable
27 value of procedural safeguards, favors Mr. Nguyen.

1 92. To safeguard against erroneous deprivations of liberty, the statute specifies the
2 limited number of reasons that an order of supervision can be revoked. Regulations specify who
3 may lawfully revoke the order, and the procedures that must be followed when doing so, including
4 giving notice and an opportunity to be heard. 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4(l)(2); *see*
5 *also id.* § 241.13(i).
6

7 93. Here, Respondents unlawfully detained Mr. Nguyen in violation of his procedural
8 due process protections under the statute, regulations, and the Fifth Amendment. The failure to
9 follow the requisite procedural safeguards has led to the deprivation of Mr. Nguyen's liberty.
10

11 94. Respondents unlawfully re-detained Mr. Nguyen without notice in violation of law.

12 95. The third factor, the government's interest, also favors Mr. Nguyen.

13 96. When the government ignores law that ensures notice and an opportunity to
14 respond to a person at risk of revocation of an order of supervision, it is more likely to waste
15 limited financial and administrative resources on unnecessary detention of people who are neither
16 flight risks nor dangerous to the community, as is the case with Mr. Nguyen. Further, because the
17 government must also allocate resources defending against a habeas corpus petition in federal
18 court to compel Respondents to comply with law, requiring Respondents to instead provide notice
19 and a meaningful opportunity to respond, prior to revoking an OSUP, reduces fiscal and
20 administrative burdens on the government.
21

22 97. The re-detention of Mr. Nguyen prior to the revocation of his OSUP, and without
23 providing him requisite notice and a meaningful opportunity to respond, violated his procedural
24 due process rights under the Fifth Amendment of the U.S. Constitution.
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1 **Count Three**
2 **Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B)**
3 **Contrary to Law and Constitutional Right**

4 98. Petitioner realleges all paragraphs above as if fully set forth here.

5 99. Under the APA, a court shall “hold unlawful and set aside agency action . . . found
6 to be . . . not in accordance with law” or “contrary to constitutional right, power, privilege, or
7 immunity.” 5 U.S.C. § 706(2)(A), (B).

8 100. The APA’s reference to “law” in the phrase “not in accordance with law,” “means,
9 of course, *any* law, and not merely those laws that the agency itself is charged with administering.”
10 *FCC v. NextWave Pers. Commc’ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

11 101. ICE failed to comply with both 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13 at the time
12 of Mr. Nguyen’s re-detention.
13

14 102. ICE never revoked Mr. Nguyen’s OSUP prior to taking him into custody.

15 103. Respondents’ re-detention of Mr. Nguyen was therefore arbitrary and capricious
16 because it violated statute, regulation, and the Constitution.
17

18 104. An agency decision that “runs counter to the evidence before the agency” is also
19 arbitrary and capricious. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29,
20 43 (1983).

21 105. Respondents’ decision to re-detain Mr. Nguyen ran counter to the evidence before
22 the agency.
23

24 106. ICE ignored its own prior findings and failed to consider Mr. Nguyen’s
25 compliance with the terms of his release.
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1 107. Respondents “failed to consider important aspects of the problem” before
2 Respondents, making their conduct arbitrary and capricious for multiple other reasons. *Dep’t of*
3 *Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1910 (2020).

4 108. First, Respondents failed to consider the serious constitutional concerns raised by
5 re-detaining Mr. Nguyen while under an OSUP.
6

7 109. Second, Respondents failed to consider the governing regulations.

8 110. Third, Respondents failed to consider less punitive alternatives.

9 111. Fourth, Respondents failed to consider Mr. Nguyen’s substantial reliance interest,
10 created by its instruction on Petitioner’s release notification, the agency would give an
11 opportunity to arrange for an orderly departure once it obtained travel documents.
12

13 112. Respondents’ decision to arrest and detain Mr. Nguyen was not made in
14 accordance with law and procedure, and thus must be set aside.
15

16 **Count Four**
17 **Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C)**
18 **In Excess of Statutory Authority**

19 113. Petitioner realleges all paragraphs above as if fully set forth here.

20 114. Under the APA, a court shall “hold unlawful and set aside agency action . . . found
21 to be . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.”
22 5 U.S.C. § 706(2)(C).

23 115. “An agency . . . literally has no power to act—including under its regulations—
24 unless and until Congress authorizes it to do so by statute.” *FEC v. Cruz*, 596 U.S. 289, 301 (2022)
25 (internal quotation marks and citation omitted).

26 116. 8 U.S.C. § 1231(a)(6) only authorizes detention past the 90-day removal period
27 for a person who is found to be a danger to the community, unlikely to comply with a removal
28

1 order, or whose removal order is on certain grounds specified in the statute. Even then, if removal
2 “is not reasonably foreseeable, the court should hold continued detention unreasonable and no
3 longer authorized by [§ 1231(a)(6)]. In that case, of course, the alien’s release may and should be
4 conditioned on any of the various forms of supervised release that are appropriate in the
5 circumstances” *Zadvydas*, 533 U.S. at 699-700.
6

7 117. Regulations that purport to give Respondents authority to revoke an order of
8 supervision on grounds other than those listed in § 1231(a)(6) are *ultra vires* and in excess of
9 statutory authority, because “[r]egulations cannot circumvent the plain text of the statute.” *You*,
10 321 F. Supp. 3d. at 463.
11

12 118. Respondents acted in excess of legal authority by detaining Mr. Nguyen without
13 proper notice.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Petitioner requests that this Court:

16 A. Exercise jurisdiction over this matter;

17 B. Enjoin Petitioner’s removal or transfer outside the jurisdiction of this Court and
18 the United States pending its adjudication of this petition;

19 C. Declare that Petitioner’s detention violates the Due Process Clause of the Fifth
20 Amendment, the INA and implementing regulations, the APA, and the *Accardi* doctrine;

21 D. Order Petitioner’s immediate release;

22 E. Award Petitioner costs and reasonable attorney’s fees; and

23 F. Grant such other relief as this Court may deem just and proper.
24

25 November 4, 2025

Respectfully Submitted,

26 /s/Jesse M. Bless

27 Jesse M. Bless

28 PETITION FOR A WRIT OF HABEAS CORPUS AND INJUNCTIVE RELIEF - 19

1 MA Bar No. 660713
2 Bless Litigation LLC
3 6 Vineyard Lane
4 Georgetown MA 01833
5 781.704.3897
6 jesse@blesslitigation.com
7 *Admitted Pro Hac Vice*
8 Attorney for Petitioner

9
10 **28 U.S.C. § 2242 VERIFICATION STATEMENT**

11 I am submitting this verification on behalf of the Petitioner because I am the Petitioner's
12 attorney. On the basis of documents, discussions with Petitioner's immigration counsel, and
13 Petitioner's family, I hereby verify that the statements made in this Petition and Complaint are
14 true and correct to the best of my knowledge.

15 */s/Jesse M. Bless*
16 Jesse M. Bless
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26
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28

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s): **Dong Van Nguyen , ;**

Defendant(s): **Gregory J. Archambeault , in his official capacity as Field Office Director, San Diego Field Office, U.S. Immigration and Customs Enforcement; David R. Rivas , in his official capacity as Warden, San Luis Regional Detention Center; United States Department of Homeland Security , ; United States Immigration and Customs Enforcement , ;**

County of Residence: Yuma

County of Residence: Outside the State of Arizona

County Where Claim For Relief Arose: Yuma

Plaintiff's Atty(s):
Jesse ,
Bless Litigation LLC
6 Vineyard Lane
Georgetown, MA 01833
781-704-3897

Defendant's Atty(s):
,
,

IFP REQUESTED

REMOVAL FROM COUNTY, CASE #

<u>II. Basis of Jurisdiction:</u>	2. U.S. Government Defendant
<u>III. Citizenship of Principal Parties(Diversity Cases Only)</u>	
Plaintiff:-	N/A
Defendant:-	N/A
<u>IV. Origin :</u>	1. Original Proceeding
<u>V. Nature of Suit:</u>	463 Alien Detainee
<u>VI. Cause of Action:</u>	28:2241 Petition for Writ of Habeas Corpus (Federal)
<u>VII. Requested in Complaint</u>	
Class Action:	No
Dollar Demand:	0
Jury Demand:	No
<u>VIII. This case is not related</u> to another case.	

Signature: /s/ Jesse M. Bless

Date: 10/31/2025

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.